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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
HONORABLE OTIS D. WRIGHT
UNITED STATES DISTRICT JUDGE PRESIDING

- - -

United States of America,)
PLAINTIFF,)
VS.) NO. CR 10-351 ODW
Carlos Rivera, Jessica Medina, Raul)
Prieto,)
DEFENDANT,)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
LOS ANGELES, CALIFORNIA
MONDAY, OCTOBER 17, 2012

KATIE E. THIBODEAUX, CSR 9858
U.S. Official Court Reporter
312 North Spring Street, #436
Los Angeles, California 90012

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1 LOS ANGELES, CALIFORNIA; MONDAY, OCTOBER 17, 2012

2 11:13 A.M.

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6 THE CLERK: Calling Item 2, CR 10-351, United
7 States of America versus Barajas, et al.

8 Counsel, may I have your appearances, please.

9 MS. EL-AMAMY: Morning, your Honor. Reema
10 El-Amamy and Michael Dore on behalf of the United States.

11 THE COURT: Ms. El-Amamy and Mr. Dore.

12 MR. NAVARRO: Morning, your Honor. Angel Navarro
13 on behalf of Carlos Rivera who is not present.

14 MR. CEPHAS: Dana Cephas for Raul Prieto who is
15 not present.

16 MR. WALSH: Joseph Walsh for Jessica Medina. She
17 is on bond, and she is present.

18 THE COURT: Mr. Walsh, Mr. Cephas. Okay. What we
19 are going to do today is just talk about scheduling, and,
20 really, it is simply a matter of comparing calendars.
21 And what I would propose that we do is have this
22 discussion off the record until such time as we have
23 reached some sort of an agreement with respect to when
24 Group B is going to go to trial, then we will put that on
25 the record.

1 Now, if anyone has any objection to that, we
2 can have all of our discussions on the record.

3 MS. EL-AMAMY: No objection.

4 MR. NAVARRO: No objection.

5 MR. CEPHAS: No objection.

6 (Discussion held off the record.)

7 THE COURT: Okay. Back on the record. We have
8 had some discussion with respect to a number of things
9 including trial scheduling and the scheduling of certain
10 pretrial activities, and we have reached the following
11 conclusion:

12 Primarily, I guess the moving factor here in
13 terms of setting the trial is the Speedy Trial Act. So
14 we are advised that we will be receiving a stipulation
15 excluding time through November 27, and November 27 will
16 be the date set for this matter to proceed to trial,
17 9:00 a.m. this courtroom.

18 Motions in limine will be filed with the court
19 by Friday, the close of business on Friday. Let's make
20 it 3:00 p.m. on Friday, November the 9th. We will have a
21 hearing on the motions in limine on November 13 at
22 2:30 p.m. I don't want more than five motions in limine
23 per side. That is government and defense. And you will
24 meet and confer in an effort to obviate the necessity to
25 have a hearing on these motions in limine.

1 I understand from the government that the
2 government will continue to work on obtaining
3 stipulations regarding certain facts to perhaps avoid the
4 need to have either witnesses appear at all or certainly
5 witnesses to testify regarding certain facts so that we
6 can move this case along as quickly as possible.

7 With respect to the issue of peremptory
8 challenges, the government will have 10 peremptory
9 challenges. Each defendant, each of the three defendants
10 will be able to exercise five peremptory challenges, and
11 we have already spoken off the record with respect to the
12 attorney's participation in the voir dire and probably
13 changes in the court hours from normal business hours.

14 Was there anything else that we discussed and
15 decided?

16 MS. EL-AMAMY: No.

17 THE COURT: Mr. Dore, Ms. El-Amamy?

18 MS. EL-AMAMY: No, your Honor.

19 THE COURT: Mr. Walsh, Mr. Cephas, Mr. Navarro?
20 Okay.

21 Any questions?

22 MR. CEPHAS: I had a question, but it may be for
23 the government. I wanted to know whether they would make
24 certain Ontario Police Department officers available
25 without subpoena.

1 THE COURT: If they were FBI agents, that would be
2 one thing, but anyway, all right. I will leave it to you
3 all to work out some of these logistical issues. I do
4 want, of course, just as a matter of courtesy, I want --
5 it will apply initially to the government, please let
6 defense counsel know 24 hours in advance the names of the
7 witnesses that you intend to call.

8 MS. EL-AMAMY: Yes, your Honor.

9 THE COURT: It will certainly streamline
10 cross-examination. There will be less fumbling around,
11 et cetera. So things will move a lot more smoothly.
12 What I wanted to let everyone know if I didn't already,
13 if there are issues with respect to exhibits,
14 admissibility of exhibits, I would like to know about
15 that when we are doing our motions in limine because
16 otherwise I want you all to stipulate to the
17 admissibility of the exhibits.

18 Whether or not I will let them in, that is
19 another issue for the time of trial. But I want you all
20 hopefully to stipulate in advance that these are all
21 authentic, you know, exhibits, and, hopefully, there will
22 be the requisite foundation, you know, to permit these
23 things to be introduced because I want you all to be able
24 during your opening statements to publish them to the
25 jury.

1 I want you at any time you are examining a
2 witness, without going through all the formalities, to
3 simply publish the exhibits and begin asking questions
4 about them. Trust me. This is a much better way to go
5 as opposed to you trying to remember before you rest
6 whether or not you have moved them into evidence because
7 if we are going to do it by the book, I will exclude them
8 if you forget. Make no mistake about it, I will exclude
9 them. But if we agree in advance that all of these
10 things are admissible subject to me keeping them out
11 because of, I don't know, whatever, they are too
12 inflammatory or more prejudicial than probative or just
13 simply irrelevant, if you will agree among yourselves
14 that these things can come in, I will permit you to refer
15 to them and publish them immediately at any time during
16 the presentation of your case including your opening
17 statements. Okay.

18 So let's talk about that during our motions in
19 limine as well. Okay. Mr. Cephas.

20 MR. CEPHAS: Your Honor, there had been an ex
21 parte application a few months ago about grand jury
22 transcripts.

23 THE COURT: I saw an order.

24 MR. CEPHAS: We thought it was for the grand jury
25 transcripts for this indictment. They produced grand

1 jury transcripts for years ago for another investigation,
2 and so we still haven't received any grand jury
3 transcripts for this indictment. And those are the ones
4 that frankly we want. I could care less about 2003 grand
5 jury transcripts. I want the ones for the 2010
6 indictment.

7 THE COURT: Now, I understand that, and I don't
8 pretend to understand everything that happened in this
9 case, but I understand that this matter was -- hope I'm
10 not thinking of different case, but I understand that
11 this matter was presented to a grand jury who did not
12 return an indictment. Then it was presented to another
13 grand jury who did. Is that this case or not?

14 MS. EL-AMAMY: There were two different
15 investigations -- one that was started by the FBI several
16 years ago. There were some witnesses that we may call at
17 trial who testified before a grand jury, and those
18 transcripts were produced. At this time, no witness that
19 will be testifying at trial testified before the grand
20 jury.

21 MR. CEPHAS: We plan on crossing whether it is by
22 cross or calling them, agents who testified at the grand
23 jury. And so I would like those transcripts for the
24 officers or agents who testified before the grand jury in
25 this case.

1 MR. DORE: Your Honor, may I just interject
2 something. I don't believe the Jencks Act applies if the
3 defense calls the witness. So any witness that the
4 government intends to call in its case in chief to which
5 Jencks applies, 18 United States Code, 3500, we have
6 produced and will produce any statements that we have of
7 them. If the defense decides on their own to call a
8 witness, that does not obligate the government to produce
9 otherwise secret grand jury transcripts.

10 MR. CEPHAS: Your Honor, could we at a minimum get
11 an order that the government identify the agents and
12 officers who testified at the grand jury?

13 MS. EL-AMAMY: Your Honor, I believe that is also
14 secret under Rule 6(e).

15 THE COURT: I don't see how we get inside that
16 room, and I think you appreciate that; right?

17 MR. CEPHAS: Actually, your Honor, I don't
18 appreciate it because -- well, your Honor, in state court
19 where I believe you were a state court judge.

20 THE COURT: For a hot minute.

21 MR. CEPHAS: I think transcripts are routinely
22 provided 30 days before trial at a minimum.

23 THE COURT: Why are we talking about that?

24 MR. CEPHAS: Well, it is my notion that a fair
25 trial, a trial shouldn't be more fair in state court than

1 it is in federal court, but, in some ways it is. And
2 that is why I am telling you I don't appreciate it
3 because I believe the federal system should be the
4 fairest trial in the land not the state system. That is
5 the only reason I brought it up because you said that I
6 would appreciate it and frankly I don't.

7 THE COURT: Interesting discussion for another
8 day, but, for whatever reason, what goes on in that room
9 except under certain limited circumstances remains fairly
10 sacrosanct. So I am not going to order the production of
11 the transcripts of grand jury examinations and testimony
12 with respect to that grand jury which returned this
13 indictment, and I can't imagine that what happened before
14 grand jury in any other case would even be relevant, but
15 it certainly will remain secret. So I guess my bottom
16 line answer to your request is no.

17 MR. CEPHAS: And, your Honor, with respect to the
18 exhibits?

19 THE COURT: Yes.

20 MR. CEPHAS: Then, will those be produced by the
21 government by the 9th, the same date as the motion in
22 limine?

23 THE COURT: I would hope. I would like them
24 produced earlier than that so that you have an
25 opportunity to conduct some sort of a reasonable

1 examination of them and make an informed decision as to
2 whether or not you feel in a position to stipulate to
3 their admissibility.

4 MR. DORE: Your Honor, the government obviously
5 will make every effort to provide the defense with every
6 exhibit it intends to use. If the court intends to make
7 that a deadline requirement, we just ask for some
8 clarification because obviously if something comes up
9 after, the defense would claim that this came after the
10 date and shouldn't be admitted. We will certainly try to
11 do it, but if the court is not inclined to make it a
12 deadline, then I just would like clarification of that.

13 THE COURT: I haven't had a chance to go off about
14 all of that. You can't believe how unimpressed I am with
15 those kinds of arguments. Well, the court said this and
16 therefore anything produced after that goes out the
17 window. No.

18 I know you all have got an awful lot to do
19 now, and I am not trying to make anymore work. I am
20 hopeful that this would eliminate some work and make
21 things easier for all of you. These aren't new
22 documents. These are documents which are part of the
23 production, I have to assume. And I would also assume
24 that most of you probably already know in advance what
25 these documents are.

1 MS. EL-AMAMY: Right. What we have been doing is
2 we have been sending out exhibit lists on a rolling basis
3 and have done at least two or three iterations of that.
4 What might make sense is to also do an exhibit list with,
5 I guess, a notebook or series of notebooks so they can
6 actually view the exhibits with those lists.

7 THE COURT: Okay. But let's keep something in
8 mind. The government's obligation to make all of these
9 disclosures, everything that could possibly be Brady
10 material, et cetera, but that is separate and distinct
11 from what you need to put on your case. And that is just
12 a notebook.

13 Okay. And that is what counsel need to see.
14 They need to see what you in good faith believe you are
15 going to be using as a trial exhibit. And that has got
16 to be a much smaller segment of the total universe of the
17 documents. So I am hoping that it is not a big deal.
18 But here is the deal. All of you, if you start
19 visualizing a problem, please let us know. Come on
20 downstairs and we will take care of defense counsel via
21 the phone, and we will resolve problems as they come up
22 particularly if you believe that you are getting in a
23 time crunch and not going to be able to do everything
24 that you need to do by a certain date.

25 But in order to give you an answer so you can

1 put something on your calendar, would you make every
2 conceivable effort to provide defense counsel at least
3 with an identification of your proposed trial exhibits by
4 the 7th of November? Now, that, I understand that that
5 is right around the corner. If this is going to be a
6 problem, let us know. And we will convene a -- in fact,
7 you can all appear on the telephone if you want, but we
8 will get together and work it out. Okay.

9 Everybody good?

10 MS. EL-AMAMY: Thank you, your Honor.

11 THE COURT: All right. Thank you all.

12 MR. NAVARRO: Thank you, your Honor.

13 (Proceedings concluded.)
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CERTIFICATE

I hereby certify that pursuant to Section 753, Title 28,
United States Code, the foregoing is a true and correct
transcript of the stenographically reported proceedings held
in the above-entitled matter and that the transcript page
format is in conformance with the regulations of the
Judicial Conference of the United States.

Date: August 2, 2013

/s/ Katie Thibodeaux, CSR No. 9858, RPR, CRR